

September 17, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400236**

GARY AND CHERYL ARMSTRONG

Code Enforcement Appeal

Location: 413301 – 242nd Avenue Northeast

Appellant: **Gary and Cheryl Armstrong**
13301 – 242nd Avenue Northeast
Woodinville, Washington 98072
Telephone: (206) 786-0132

King County: Department of Development and Environmental Services,
represented by **Erroll Garnett**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7102
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Appeal denied

EXAMINER PROCEEDINGS:

Hearing Opened:	September 14, 2004
Hearing Closed:	September 14, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On June 17, 2004, the King County Department of Development and Environmental Services, Code Enforcement Section, issued a notice and order to Gary and Cheryl Armstrong at 13301 – 242nd Avenue Northeast alleging the construction of a barn without required permits on their RA-5 zoned residential parcel. A prior case opened in 1999 (file no. E9901655) concerning the same alleged violation was closed by the Department on December 14, 1999. Gary Armstrong has filed a timely appeal of the notice and order. His appeal statement asserts that closure of the 1999 case bars the instant proceeding for the same alleged violation and as well that he obtained necessary building permits for his barn.
2. Even though staff photographs (exhibits 6 and 7) were not admitted to the record because of lack of proper authentication, the existence of the barn is not in dispute. Its presence is acknowledged within the Appellant's appeal statement, within his September 10, 2004, submittal admitted as exhibit no. 9, and within his hearing testimony. In his testimony Mr. Armstrong stated that the barn was built in 1994 or 1995 pursuant to a building permit; he did not claim that the structure was exempt from permitting requirements due to a floor area below the regulatory threshold. Thus, the essential issue is not whether a barn was constructed or a building permit required, but simply rather whether a permit was in fact issued.
3. There is no documentary evidence of a building permit ever having been issued by King County for a barn or similar structure at 13301 – 242nd Avenue Northeast. Exhibit 8 contains the DDES PermitsPlus computerized records for the Armstrong property and shows 1990 building permits for the construction of a single-family residence and garage and a 2003 permit for a roof and deck. In between 1990 and 2003 the only other permit issued for the property was a grading permit in 2000.
4. Mr. Armstrong has, for his part, produced no competent documentary evidence that a building permit was ever obtained for the barn. Indeed, Mr. Armstrong testified that he had never actually seen the permit but had relied entirely on his contractor to meet permitting requirements. In this regard, Mr. Armstrong's exhibit 9 packet contains two brief, vague statements ascribed to one Sonny Sachs, both offering nearly identical language. The earlier, dated May 17, 2004, is on business letterhead and reads as follows:

“Barn was built in early 90's to King County/UBC building code.

Plan check done, permit issued and inspections done by King County building inspectors.

Retention pond was designed and built to accommodate the covered riding arena to be built in the future.”
5. Due to their hearsay nature and the lack of any specific information that could be used to independently verify their content, these written statements attributed to Mr. Sachs are

not persuasive. If indeed a building permit had been issued to Mr. Sachs for barn construction on the Armstrong property, he at least should have been able to provide a permit copy, a permit number, a cancelled permit fee payment check or some relevant issuance and inspection dates. The unhappy truth is that contractors sometimes construct simple outbuildings without building permits but nonetheless assure their clients that all legal formalities have been met. This appears to be what happened here.

6. At the public hearing held on his appeal on September 14, 2004, Mr. Armstrong also attempted to link the instant enforcement action to a vast conspiracy hatched by DDES staff which relates primarily to the regrading of the private roadway system that serves this neighborhood. While the County code enforcement system is complaint-driven, and it may well be the case that the individual who reported Mr. Armstrong's barn was motivated by concerns related to the private road dispute, neither the motives of the complainant nor those of DDES staff are relevant to this administrative proceeding. We are concerned here simply with the question of whether a building permit was issued as required for Mr. Armstrong's barn. If the Appellant wishes to further pursue his conspiracy theories, he will need to present them before a court of competent jurisdiction.

CONCLUSIONS:

1. Mr. Armstrong has not met his burden of proof to establish that a valid building permit was ever issued for the barn constructed on his property at 13301 – 242nd Avenue Northeast in the mid-1990s. There is no competent documentary evidence of any kind demonstrating the existence of such a permit.
2. The fact that DDES may have previously opened an investigation file for this same building permit violation and then later closed it is not a defense to the notice and order. It is within DDES's discretion to open, close and then reopen investigations as new information becomes available. Although the code enforcement process is largely complaint-driven, the instant proceeding does not constitute a complainant appeal because the notice and order was issued by DDES and is being challenged by the cited property owner. The complainant is not a party to this proceeding.
3. The evidence of record mandates a conclusion that a barn was constructed on the Armstrong property in the mid-1990s without the required building permit authorization. Therefore, the notice and order must be upheld and the appeal denied.

DECISION:

The appeal is DENIED.

ORDER:

1. No penalties shall be assessed against the Appellants or their property if within 30 days of the date of this order a complete building permit application for the existing barn is submitted to DDES.
2. If the submittal deadline stated above in condition no. 1 is not met, DDES may assess penalties against the Appellants and their property retroactive to the date of this order.

ORDERED this 17th day of September, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 17th day of September, 2004, via certified mail to the following:

Gary & Cheryl Armstrong
13301 – 242nd Ave. NE
Woodinville, WA 98072

TRANSMITTED this 17th day of September, 2004, to the following parties and interested persons of record:

Gary & Cheryl Armstrong
13301 - 242nd Ave. NE
Woodinville WA 98072

Moyna Billing
13507 - 242nd Ave. NE
Woodinville WA 98077

John Briggs
KC Prosecuting Attys. Office
Civil Division
MS KCC-PA-0550

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

Erroll Garnett
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Patricia Malone
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Code Enf. Section
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Jon Pederson
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Bill Turner
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE SEPTEMBER 14, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400236.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Erroll Garnett, John Briggs and Jon Pederson, representing the Department; and Gary Armstrong, the Appellant.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to the Hearing Examiner for September 14, 2004
- Exhibit No. 2 Copy of the Notice & Order issued June 17, 2004
- Exhibit No. 3 Copy of Appeal received July 1, 2004
- Exhibit No. 4 Copies of Codes cited in the Notice & Order
- Exhibit No. 5 Copy of Violation Letter sent March 25, 2004
- Exhibit No. 6 Photos taken by Darren Wilson on March 10, 2004 (*Excluded*)
- Exhibit No. 7 Aerial Photos from Walker & Associates (*Excluded*)
- Exhibit No. 8 Permits Plus copies showing activity for this parcel
- Exhibit No. 9 Fax from Gary Armstrong dated September 10, 2004 containing a declaration from Sonny Sachs